



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

24

मामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Single Bench; Hon'ble Mr. Justice Dhirendra Mishra</u> <u>CRIMINAL APPEAL NO.286/1998</u>	
	<u>Applicant</u>	Om Prakash Alias Shri Lala, S/o Vishnu Narayan Tiwari, Gadriya Para, Daundi, Tah. and Distt. Durg (M.P.)
	Vs	
	<u>Respondent</u>	State of M.P. Through the Distt. Magistrate, Durg (M.P.)
	<u>27.8.2007</u>	
	None for the appellant.	
	Mr. Arun Sao, Govt. Advocate for the State.	
	On 20.8.2007 Mr. Bhupendra Singh, Advocate was appointed as Amicus Curiae to represent the appellant. However, on 23.8.2007 as well as today when the matter was called, Mr. Bhupendra Singh was not present.	
	In view of the above, Mr. Devesh Verma, Advocate is appointed as Amicus Curiae to represent the appellant.	
	Heard.	
	This appeal is directed against the judgment of conviction and order of sentence dated 29 th November, 1997 passed by the learned 3 rd Additional Sessions Judge, Durg in Sessions Trial No.187/97 whereby the appellant has been convicted under Sections 364 & 307 of the IPC and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.500/- in default of payment of fine to further undergo R.I. for 6	

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	months & R.I. for 7 years and to pay a fine of Rs.500/- in default of payment of fine to further undergo R.I. for 6 months respectively. Both the sentences have been directed to run concurrently. The prosecution case, in brief, is that on 23.4.1997 the appellant himself gave information in the police station that he has killed a girl in village Bharritola. For verifying the report of the appellant, the police proceeded for the place of incident and on enquiry it was found that injured Ateshwari, aged about 3 years, had gone to school and while she was playing in the school the accused took her in the house of his brother Krishan Kumar and there tried to strangulate her with cloth and also tried to injure her by slitting her neck with a sickle, as a result of which Ateshwari became unconscious and froth started coming out of her mouth. This was witnessed by Smt. Neetu Tiwari (PW-9), who is wife of the brother of the appellant. After investigation charge sheet was filed against the appellant and the trial Court by the impugned judgment convicted and sentenced the appellant, as mentioned above. Conviction of the appellant is based on the recovery of sickle on the basis of memorandum (Ex.P-1) of the appellant, seizure in pursuance of the said memorandum of Ex.P-2 have been duly proved by Shri R.N. Singh, Investigating Officer (PW-10) and also from the statement of PW-2, who has signed the above documents as witness. Apart from	

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	recovery of sickle the accused led to recovery of a blood stained towel, pair of slippers and one atlas cycle vide Ex.P-3 & P-4. The conviction is also based on the statement of Smt. Neetu Tiwari (PW-9), who is real Bhabhi of the accused and who has stated that at about 9-9.30 p.m. in the morning when she returned after taking her bath, she saw the accused sitting near Ateshwari, who was lying on the floor, she shouted and at that time Bhushan (PW-2) came there, she asked Bhushan to call her husband Krishan Kumar and by the time her husband reached there, the accused has already fled from there. PW-4 Krishan Kumar, who is elder brother of the appellant, has also stated that he reached to his home on being called by Bhushan and saw that girl Ateshwari was lying in unconscious condition in her room, on spraying water on her face she gained consciousness and thereafter she started weeping. He also saw abrasions on her neck. Statement of this witness is duly corroborated by the statement of PW-5 Mahesh Kumar. PW-10 Dr. L.L. Markandey has examined the victim Ateshwari and observed four linear abrasions on the right side of her neck. He opined that injuries were simple in nature, though the same were caused by some sharp edged weapon. His injury report is Ex.P-14. He has further opined that the injuries could be caused by the sickle seized on the basis of the memorandum of the appellant.	

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	From the evidence available on record it also appears that the girl was admitted in the hospital for three days, as she was terribly frightened. The Court below after considering the overall evidence available on record and after discussing the evidence meticulously has arrived at the conclusion that the appellant with an intention to commit murder had abducted Ateshwari, 3 years old girl, and had attempted to murder her by strangulating her with the help of Gamcha and also by slitting her neck with sickle. The finding arrived at by the trial Court is based on the proper appreciation of evidence available on record and the same does not call any interference by this Court. In the result, the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellant under Sections 364 & 307 of the IPC. The appeal of the appellant is devoid of any substance, the same is liable to be dismissed and it is hereby dismissed.	Sd/- DHIRENDRA MISHRA Judge